Supreme Court, U.S.
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No. 98-1616

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1998

GLORIA J. HOOKER, DORA E. HOOKER, DAVID O. HOOKER, & VIRGIL O. HOOKER,
Petitioners,
v.

AGRIBANK FCB, TERRY FREDRICKSON, RALPH W. WADDELL, & BENTLEY E. STORY,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

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1988

Question Presented

The Hookers filed a notice of appeal thirty-one days after the District Court's final decision on their third federal lawsuit attempting to gum up state-court foreclosure proceedings instituted by AgriBank. The Eighth Circuit dismissed the Hookers' appeal for lack of jurisdiction. Was the Hookers' notice of appeal timely?

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Statement Of The Case

When the Hookers failed to pay their debts, AgriBank started foreclosure proceedings on the mortgage it held on their farm. **Petitioners' Appendix ("A") 2**. By way of defense, the Hookers went on the offense with related litigation. This, for example, is their third federal lawsuit against the Arkansas State Court judge (the Honorable Bentley E. Story) presiding over the foreclosure action and other parties. **A 2**; *see also, Hooker v. Story*, 159 F.3d 1139 (8th Cir. 1998)(the second lawsuit).

In this case, the Hookers alleged a conspiracy in violation of R.I.C.O. among Judge Story, AgriBank, the Bank's president (Terry Fredrickson), and the Bank's lawyer (Ralph Waddell). **A 3**. The Hookers also alleged -- as they have maintained throughout all their litigation -- that AgriBank was a foreign corporation doing business in Arkansas illegally. **Supplemental Appendix ("SA") 14-16**. The Hookers' complaint sought approximately three hundred fifty-five million dollars in damages. **SA 16-17**.

On the defendants' motions, the District Court dismissed this "rehash of [the Hookers'] previous lawsuits." **A 3**. The Court gave three reasons for its decision: *res judicata*, collateral estoppel, and failure to

state a claim. **A 3**. The Court also ruled that, for purposes of transacting business in Arkansas, AgriBank was a federal instrumentality not a foreign corporation. **A 3**. The District Court then entered its judgment. **A 1**.

The Hookers filed a timely post-judgment motion. "Based on a review of the record," on 8 June 1998 the District Court filed an order denying that motion.

On 7 July 1998, the Hookers mailed their notice of appeal from the District Court's decisions to the District Court clerk. The clerk received and filed it two days later on July 9th. **SA 17**.

AgriBank, Fredrickson, and Waddell filed a joint motion to dismiss the Hookers' appeal as untimely. Their notice was filed thirty-one days after the District Court denied the Hookers' post-judgment motion. *Compare*, **A 5**, *with* **SA 17**. That was, said the AgriBank defendants, one day too late under Federal Rule of Appellate Procedure 4(a)(1).

A panel of the Eighth Circuit agreed, granted the motion, and dismissed the Hookers' appeal "for lack of jurisdiction as it is untimely." **A 7**. A few months later, the Court of Appeals denied the Hookers' petition for rehearing. **A 8**.

The Hookers have now petitioned this Court for review of the Eighth Circuit's decision about the timeliness of their notice of appeal.

The Reasons For Denying The Writ

There are no "special and important reasons" to grant the Hookers' petition. USSCTR 10.1. There is, in fact, no good reason to do so.

This case presents no question on which the Courts of Appeals have divided; it involves no stray state-court interpretation of federal law; and it raises no important, but unsettled, question of federal law. *Compare*, USSCTR 10.1. Petitioners, by their silence, agree that none of these weighty concerns call on this Court's discretion.

Instead, petitioners invoke this Court's general supervisory authority, argue that the Eighth Circuit made a mistake in applying the Federal Rules of Appellate Procedure, and seek the writ to correct that error. The Hookers are mistaken on all counts. The Eighth Circuit interpreted the Federal Rules correctly: the Hookers' notice of appeal was untimely. And in any event, this is not the proper case to consider how Appellate Rule 4 applies to AgriBank and similar entities.

1. There Was No Error Below Because The Hookers' Notice Was Untimely

The Hookers filed their notice of appeal thirty-one days after the District Court ruled on their post-judgment motion. That was one day too late. A timely notice of appeal is "mandatory and jurisdictional." *Browder v. Director, Dept. of Corrections of Ill.*, 434 U.S. 257, 264 (1978); *see also, Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). Having given notice too late, the Hookers deprived the Court of Appeals of jurisdiction. The Eighth Circuit recognized that truth, and correctly dismissed their appeal.

The Hookers cannot salvage their untimely appeal by pointing to AgriBank's status. The Rules, it is true, extend the usual thirty-day time for filing a notice of appeal to sixty days in cases where "the United States or an officer or agency thereof is a party[.]" FRAP 4(a)(1). But that provision is of no help to the Hookers.

AgriBank is not a federal agency for purposes of FRAP 4. AgriBank is the successor to the Federal Land Bank of St. Louis. Each Federal Land Bank was created by congress as a "federally chartered instrumentality of the United States." 12 U.S.C. § 2011 (1994). This "federal instrumentality" designation, however, is not dispositive of whether AgriBank is a federal agency for purposes of FRAP 4(a)(1).

In an analogous case, the Ninth Circuit held that a Production Credit Association -- a sister entity -- was not a federal agency within the meaning of FRAP 4(a)(1). *Hoag Ranches v. Stockton Production Credit Association*, 846 F.2d 1225, 1227, 1229 (9th Cir. 1988). The *Hoag* Court's reasoning about the PCA's status under Rule 4 applies with equal vigor to AgriBank as successor to the Federal Land Bank of St. Louis. *Hoag*, 846 F.2d at 1227 (Federal Land Banks were PCA counterparts).

By statute and court decision, it is clear that AgriBank does not have all the rights or all the duties of federal agencies. Federal courts, for example, do not have subject matter jurisdiction over claims against AgriBank simply because of the Bank's federal-instrumentality status. 28 U.S.C. § 1349 (1994); *see, e.g., Cotton v. Federal Land Bank of Columbia*, 647 F.Supp. 37, 38 (M.D. Ga. 1986), *aff'd*, 887 F.2d 1091 (11th Cir. 1989) (table) ("The mere fact that defendant is federally chartered does not support federal jurisdiction."). AgriBank is not a government agency subject to the Fifth Amendment. *E.g., Birbeck v. Southern New England Prod. Credit Ass'n*, 606 F.Supp. 1030, 1034-35 (D. Conn. 1985). AgriBank is not a state actor subject to 42 U.S.C. § 1983 (1994), or similar statutes. *E.g., Walker v. Federal Land Bank of St. Louis*, 726 F.Supp. 211, 214 (C.D. Ill. 1989). Similarly,

AgriBank is not a federal agency for purposes of extending the time to appeal under Rule 4(a)(1). *Hoag*, 846 F.2d at 1229.

2. The Hookers Did Not Rely On AgriBank's Status When They Filed Their Notice

For purposes of doing business in Arkansas, AgriBank is a federal instrumentality not a foreign corporation. That was the District Court's correct decision. **A 3**. But for purposes of Appellate Rule 4, AgriBank is just like any other party.

The Hookers knew that. Trying to meet the thirty-day deadline, they mailed their notice of appeal to the District clerk twenty-nine days after the District Court's final decision. **SA 19**. But the mail did not cooperate. The clerk received and filed their notice on July 9th, the thirty-first day, and thus one day too late.

The Hookers, moreover, are probably estopped from avoiding their filing error by relying on AgriBank's status. Rejecting the implication of AgriBank's status as a federal instrumentality for purposes of doing business in the several states, the Hookers have consistently argued that AgriBank is a foreign corporation operating illegally in Arkansas. *E.g.*, **SA 14-16**. That has been

their position in this case and others. The Hookers may not change their tune -- and rely on AgriBank's status as a federal instrumentality -- to save themselves from their obvious timing error.

In their petition, the Hookers claim to have relied upon AgriBank's status in calculating the time to file their notice. That is untrue. The record contains no evidence of any such reliance. The Hookers' reliance argument is also newly minted for their petition to this Court: they did not make that argument to the Court of Appeals. Finally, the timing of their notice strongly suggests that there was no such reliance. The Hookers knew their notice had to be filed by July 8th; that is why they mailed it for filing on July 7th. **SA 19**. In sum, the record simply will not support the Hookers' new reliance argument, and they waived it below.

3. There Are Larger Reasons Not To Grant The Petition

In any event, this case is not the proper vehicle for this Court to consider FRAP 4(a)(1) and entities such as AgriBank. The record contains no facts about AgriBank's operations. So there is no factual basis for meaningful legal analysis by this Court. The Court of Appeals' order contains no reasoning to aid this Court's

decision. The issue has not been considered or developed by many lower federal courts. And at bottom, this case is a frivolous rehash of the Hookers' previous federal lawsuits -- one of their many frivolous attempts to stop foreclosure on their farm with offensive litigation. For all these reasons, this is not the right case for this Court to consider the reach of Rule 4(a)(1).

This Court's supervision of the federal courts undoubtedly contains an error-correcting component not present in other cases. The wise exercise of discretion, however, requires this Court to invoke its supervisory jurisdiction only on very important issues. *E.g.*, *Zahn v. International Paper Co.*, 414 U.S. 291 (1973)(the jurisdictional amount in class actions). Here, the Court of Appeals made no error. But even assuming that it did, the issue presented is not significant. As shown by the dearth of reported decisions on point, AgriBank's status under Rule 4 is a largely academic question. It only arises episodically. The Hookers' belated attempt to ask that question -- in hopes of obscuring their filing error -- does not deserve this Court's attention.

Conclusion

This Court should deny the Hookers' Petition.

Respectfully submitted,

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1. The Hookers' Complaint (Excerpt, Without Exhibits)

In The United States District Court
Eastern District Of Arkansas
Helena Division
Filed 26 March 1998

Gloria J. Hooker, Dora E. Hooker
David O. Hooker, Virgil O. Hooker, Plaintiffs
v. H-C-98-037
AgriBank, FCB; Terry Fredrickson,
President of AgriBank, FCB; Ralph
W. Waddell; and Bentley E. Story, Defendants

Complaint

* * *

AgriBank, FCB the defendant enterprise is a cheat, cheap, shameful, illegal, unregistered, unqualified foreign corporation that is shamefully, illegally, unlawfully, and corruptly doing intrastate business within St. Francis County & the entire State of Arkansas while not being a qualified corporation not having met the requirement governing all Corporation doing business in the State of Arkansas, see exhibit E attached hereto.

* * *

Defendant & enterprise AGRIBANK, FCB, is the Successor to FARM CREDIT OF ST. LOUIS, MISSOURI, f/k/a THE FEDERAL LAND BANK OF ST. LOUIS, MISSOURI and for purposes of this lawsuit will be referred to as the 'enterprise' or Agribank, FCB & is the entity now in existence that is a descendant of the above two banking entities yet neither Agribank, FCB, see exhibit E, nor Farm Credit Bank of St. Louis, see exhibit C, nor The Federal Land Bank of St. Louis, see exhibit D is not at this time a qualified corporation, either foreign or domestic, not having met the requirements governing all corporations in this State, against see Exhibits C, D, & E attached hereto and the 'enterprise' Agribank, FCB and its agents and assigns are material at all times and are residents of RAMSEY COUNTY, MINNESOTA, with its principal place of business/residence at 375 Jackson St., St. Paul Mn. 55101 & can receive service of process at same said address.

* * *

The enterprise along with the other named defendants has done all of the above & continues to criminally to business, including intrastate business as an illegal, unregistered corporation to cheat and defraud the

plaintiffs and people of Arkansas against the trade, commerce, public morals and violating the laws of the State of Arkansas as the enterprise must register with the Secretary of State and filed its charter or articles of incorporation in order to do business in said state pursuant to [various Arkansas statutes].

* * *

FIRST CLAIM FOR RELIEF - R.I.C.O.
Special Damages $4,000,000, four Million dollars General and Compensatory Damages $4,599,560.00, 4 million five hundred and 99 thousand & five-hundred sixty dollars Punitive Damages $80,000,000, eighty million dollars Treble Damages $265,798,680.00, two-hundred & sixty-five million, seven hundred and ninety eight thousand & six-hundred & eighty dollars to be jointly & severally paid.

SECOND CLAIM FOR RELIEF CONSPIRACY AGAINST RIGHTS OF CITIZENS
Special Damages $4,000,000, four Million dollars General and Compensatory Damages $4,599,560.00, 4 million five hundred and 99 thousand & five-hundred sixty dollars Punitive Damages $80,000,000, eighty million dollars Treble Damages $265,798,680.00, two-hundred & sixty-five million, seven hundred and ninety

eight thousand & six-hundred & eighty dollars to be jointly & severally paid.

* * *

Respectfully submitted,
/s/ Virgil O., Dora E., David O. and Gloria J. Hooker,
Route 2, Box 100, Palestine, Arkansas 72373 (870)
581-2436

2. The Hookers' Notice Of Appeal (Without Exhibits)

In The United States District Court
Eastern District Of Arkansas
Helena Division
Filed 9 July 1998

Gloria J. Hooker, Dora E. Hooker
David O. Hooker, Virgil O. Hooker, Plaintiffs
v. H-C-98-037
AgriBank, FCB; Terry Fredrickson,
President of AgriBank, FCB; Ralph
W. Waddell; and Bentley E. Story, Defendants

Notice Of Appeal

Notice is hereby given that Gloria J. Hooker, Et

al., hereby appeals to the United States Court of Appeals for the Eighth Circuit from Order(s) annexed hereto from the U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS. ORDER of May 05, 1998 (Ext. of Time) is attached hereto as Exhibit 1; ORDER of May 12, 1998 (Staying Discovery & Quashing Depositions-Story), attached hereto as exhibit A; ORDER of May 15, 1998 (Staying Discovery & Quashing Depositions on Agribank, Fredrickson, & Waddell), attached hereto as Exhibit B, ORDER & JUDGMENT of May 20, 1998 (Dismissing plaintiff's complaint in its entirety), attached hereto as exhibit C; ORDER of June 3, 1998 Denying Plaintiff's Petition [#31] as being moot, see Exhibit D attached hereto; ORDER of June 3, 1998 Denying Plaintiff's Petition [#29] as being moot, see exhibit E attached hereto; ORDER of June 3, 1998 DENYING Plaintiff's Petition [#27] as being moot, see exhibit F attached hereto; ORDER of June 8, 1998 DENYING Plaintiff's Petition to Reconsider & Set aside 5-20-98 Order & Judgment [#35], see exhibit G attached hereto; and all above Orders are now appealed from on this 7 day of July, 1998 to the U. S. Court of Appeals for the Eighth Circuit in St. Louis, MO.

Respectfully submitted,

/s/ Virgil O., Dora E., David O. and Gloria J. Hooker, Route 2, Box 100, Palestine, Arkansas 72373 (870) 581-2436

Certificate of Service

I David O. Hooker on behalf of plaintiffs do certify that I have sent by certified mail or overnite mail the original of this document with appropriate copies to the U. S. District Court, Clerk's Office, Mr. James W. McCormach at the Federal District Courthouse located at 600 W. Capitol Avenue, suite 402, Little Rock, Arkansas 72201-3325 for the U. S. District Court for the Eastern District of Arkansas on the 7 day of July 1998. On the same above date have sent a true and accurate copy of the same document to Shirley E. Guntharp, Deputy AG, 323 Center Street, Suite 200, Little Rock, Ark. 72201 and a true & accurate copy on the above date has been mailed to attorney Ralph W. Waddell at P. O. Box 1700, Jonesboro, Arkansas 72403.

Respectfully submitted,
/s/ Virgil O., Dora E., David O. and Gloria J. Hooker, Route 2, Box 100, Palestine, Arkansas 72373 (870) 581-2436